

**ASSEMBLY BILL**

**No. 2555**

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**Introduced by Committee on Water, Parks, and Wildlife (Assembly Members Levine (Chair), Dodd, Cristina Garcia, Gomez, Lopez, Mathis, Medina, and Williams)**

February 19, 2016

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An act to amend Sections 2115.5 and 2301 of, and to amend and repeal Sections 2074.2, 2074.6, 2074.8, and 2075.5 of, the Fish and Game Code, relating to fish and wildlife.

LEGISLATIVE COUNSEL'S DIGEST

AB 2555, as introduced, Committee on Water, Parks, and Wildlife. Fish and wildlife.

(1) The California Endangered Species Act requires the Fish and Game Commission to establish a list of endangered species and a list of threatened species, and requires the department to recommend, and the commission to adopt, criteria for determining if a species is endangered or threatened. Under the act, an interested person may petition the commission to add a species to, or remove a species from, either the list of endangered species or the list of threatened species, and existing law requires the commission to consider the petition at a meeting, as prescribed. Existing law, until January 1, 2017, establishes additional procedures for the review of a petition, including public hearings and public comment.

This bill would extend those procedures indefinitely.

(2) Existing law requires the Department of Fish and Wildlife to develop and implement a recovery strategy pilot program for coho salmon. Existing law repeals the authority for the pilot program on

January 1, 2017, but requires any recovery strategy that has been approved or implemented prior to that date to remain in effect.

The bill would extend these provisions until January 1, 2020.

(3) Existing law generally prohibits a person from possessing, importing, shipping, or transporting in the state, or from placing, planting, or causing to be placed or planted in any water within the state, dreissenid mussels, and authorizes the Director of Fish and Game or his or her designee to engage in various enforcement activities. Existing law provides that a person who violates or resists, delays, obstructs, or interferes with the implementation of these provisions is subject to a penalty, in an amount not to exceed \$1,000, that is imposed administratively by the department. Existing law exempts certain entities from enforcement activities, or from civil or criminal liability, under prescribed circumstances. These provisions are repealed on January 1, 2017.

This bill would extend these provisions to January 1, 2020.

Under existing law, a violation of these provisions is a crime. By extending the operation of these provisions, this bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 2074.2 of the Fish and Game Code, as  
2     amended by Section 3 of Chapter 387 of the Statutes of 2013, is  
3     amended to read:  
4     2074.2. (a) At the meeting scheduled pursuant to Section 2074,  
5     the commission shall hold a public hearing on the petition and  
6     shall receive information, written or otherwise, and oral testimony.  
7     After the conclusion of oral testimony from the commission and  
8     department staff, the petitioner, or any other persons, the  
9     commission may close the public hearing and administrative record  
10    for the commission's decision pursuant to this section.

(b) After the commission closes the public hearing, the administrative record for the commission's decision is closed and it shall not be reopened except as provided in subdivision (c). Once the public hearing is closed, no person shall submit further information to the commission for consideration on that petition and the commission shall not accept any further information for consideration on that petition except as provided in subdivision (c).

(c) The administrative record for the commission's decision pursuant to this section shall not be reopened once the commission closes the public hearing unless one of the following occurs prior to the commission's decision:

(1) There is a change in state or federal law or regulation that has a direct and significant impact on the commission's determination as to whether the petition provides sufficient information to indicate that the petitioned action may be warranted.

(2) The commission determines that it requires further information to evaluate whether the petition provides sufficient information to indicate that the petitioned action may be warranted. If the commission makes that determination during its deliberation, the commission may request, on the record at the scheduled meeting or at a continued meeting, further information on any issue relevant to making its determination as to whether the petition provides sufficient information to indicate that the petitioned action may be warranted. Any request by the commission pursuant to this paragraph shall specify a date by which the information must be submitted to the commission and shall serve to reopen the administrative record for the limited purpose of receiving further information relating to the issues specified by the commission in the request. Commission and department staff, the petitioner, or any other person may submit information in response to a request pursuant to this paragraph. If the commission reopens the record pursuant to this paragraph, it shall provide an opportunity for public comment on the submitted information prior to the issuance of its decision.

(d) In its discretion, the commission may either close the public hearing and continue the meeting on the petition for the purpose of deliberation or continue both the public hearing and the meeting on the petition to a subsequent date, which shall be no later than 90 days after the meeting scheduled pursuant to Section 2074, and

1 subject to applicable notice and agenda requirements. If the  
2 commission closes the public hearing but continues the meeting  
3 for the purpose of deliberation, a person shall not submit, and the  
4 commission shall not receive, further information relating to the  
5 petition except as provided in subdivision (c).

6 (e) At the meeting scheduled pursuant to Section 2074 or at a  
7 continued meeting scheduled pursuant to subdivision (d), the  
8 commission shall consider the petition, the department's written  
9 report, written comments received, and oral testimony provided  
10 during the public hearing, and the commission shall make and  
11 enter in its record one of the following findings:

12 (1) If the commission finds that the petition does not provide  
13 sufficient information to indicate that the petitioned action may  
14 be warranted, the commission shall publish a notice of finding that  
15 the petition is rejected, including the reasons why the petition is  
16 not sufficient.

17 (2) If the commission finds that the petition provides sufficient  
18 information to indicate that the petitioned action may be warranted,  
19 the commission shall publish a notice of finding that the petition  
20 is accepted for consideration. If the accepted petition recommends  
21 the addition of a species to either the list of endangered species or  
22 the list of threatened species, the commission shall include in the  
23 notice that the petitioned species is a candidate species. The  
24 commission shall maintain a list of species which are candidate  
25 species.

26 (f) The commission shall publish and distribute the findings  
27 relating to the petition pursuant to Section 2078.

28 ~~(g) This section shall remain in effect only until January 1, 2017,~~  
29 ~~and as of that date is repealed, unless a later enacted statute, that~~  
30 ~~is enacted before January 1, 2017, deletes or extends that date.~~

31 SEC. 2. Section 2074.2 of the Fish and Game Code, as added  
32 by Section 4 of Chapter 387 of the Statutes of 2013, is repealed.

33 ~~2074.2. (a) At the scheduled meeting, the commission shall~~  
34 ~~consider the petition, the department's written report, and~~  
35 ~~comments received, and the commission shall make and enter in~~  
36 ~~its public record one of the following findings:~~

37 ~~(1) If the commission finds that the petition does not provide~~  
38 ~~sufficient information to indicate that the petitioned action may~~  
39 ~~be warranted, the commission shall publish a notice of finding that~~

1 the petition is rejected, including the reasons why the petition is  
2 not sufficient.

3 (2) ~~If the commission finds that the petition provides sufficient~~  
4 ~~information to indicate that the petitioned action may be warranted,~~  
5 ~~the commission shall publish a notice of finding that the petition~~  
6 ~~is accepted for consideration. If the accepted petition recommends~~  
7 ~~the addition of a species to either the list of endangered species or~~  
8 ~~the list of threatened species, the commission shall include in the~~  
9 ~~notice that the petitioned species is a candidate species. The~~  
10 ~~commission shall maintain a list of species which are candidate~~  
11 ~~species.~~

12 ~~(b) The commission shall publish and distribute the findings~~  
13 ~~relating to the petition pursuant to Section 2078.~~

14 ~~(c) This section shall become operative on January 1, 2017.~~

15 SEC. 3. Section 2074.6 of the Fish and Game Code, as amended  
16 by Section 5 of Chapter 387 of the Statutes of 2013, is amended  
17 to read:

18 2074.6. ~~(a)~~ The department shall promptly commence a review  
19 of the status of the species concerned in the petition. Within 12  
20 months of the date of publication of a notice of acceptance of a  
21 petition for consideration pursuant to paragraph (2) of subdivision  
22 (e) of Section 2074.2, the department shall produce and make  
23 publicly available on the department's Internet Web site a final  
24 written peer reviewed report, based upon the best scientific  
25 information available to the department, which indicates whether  
26 the petitioned action is warranted, which includes a preliminary  
27 identification of the habitat that may be essential to the continued  
28 existence of the species, and which recommends management  
29 activities and other recommendations for recovery of the species.  
30 Prior to releasing the final written report, the department shall have  
31 a draft status review report prepared and independently peer  
32 reviewed, and upon receiving the peer reviewers' input, shall  
33 evaluate and respond in writing to the independent peer review  
34 and shall amend the draft status review report as appropriate. The  
35 revised report shall be posted on the department's Internet Web  
36 site for a minimum of 30 days for public review prior to the hearing  
37 scheduled pursuant to Section 2075. The commission may grant  
38 an extension of up to six months if the director determines an  
39 extension is necessary to complete independent peer review of the  
40 report, and to provide a minimum of 30 days for public review of

1 the peer reviewed report prior to the public hearing specified in  
2 Section 2075.

3 ~~(b) This section shall remain in effect only until January 1, 2017,~~  
4 ~~and as of that date is repealed, unless a later enacted statute, that~~  
5 ~~is enacted before January 1, 2017, deletes or extends that date.~~

6 SEC. 4. Section 2074.6 of the Fish and Game Code, as added  
7 by Section 6 of Chapter 387 of the Statutes of 2013, is repealed.

8 ~~2074.6. (a) The department shall promptly commence a review~~  
9 ~~of the status of the species concerned in the petition. Within 12~~  
10 ~~months of the date of publication of a notice of acceptance of a~~  
11 ~~petition for consideration by the commission pursuant to paragraph~~  
12 ~~(2) of subdivision (a) of Section 2074.2, the department shall~~  
13 ~~provide a written report to the commission, based upon the best~~  
14 ~~scientific information available to the department, which indicates~~  
15 ~~whether the petitioned action is warranted, which includes a~~  
16 ~~preliminary identification of the habitat that may be essential to~~  
17 ~~the continued existence of the species, and which recommends~~  
18 ~~management activities and other recommendations for recovery~~  
19 ~~of the species.~~

20 ~~(b) This section shall become operative on January 1, 2017.~~

21 SEC. 5. Section 2074.8 of the Fish and Game Code, as amended  
22 by Section 7 of Chapter 387 of the Statutes of 2013, is amended  
23 to read:

24 ~~2074.8. (a) This article does not impose any duty or obligation~~  
25 ~~for, or otherwise require, the commission or the department to~~  
26 ~~undertake independent studies or other assessments of any species~~  
27 ~~when reviewing a petition and its attendant documents and~~  
28 ~~comments. However, the department shall seek independent~~  
29 ~~scientific peer review of the department's status report. The director~~  
30 ~~may approve an extension of time for completion of the status~~  
31 ~~report if necessary for the purposes of obtaining independent peer~~  
32 ~~review pursuant to Section 2074.6.~~

33 ~~(b) This section shall remain in effect only until January 1, 2017,~~  
34 ~~and as of that date is repealed, unless a later enacted statute, that~~  
35 ~~is enacted before January 1, 2017, deletes or extends that date.~~

36 SEC. 6. Section 2074.8 of the Fish and Game Code, as added  
37 by Section 8 of Chapter 387 of the Statutes of 2013, is repealed.

38 ~~2074.8. (a) This article does not impose any duty or obligation~~  
39 ~~for, or otherwise require, the commission or the department to~~  
40 ~~undertake independent studies or other assessments of any species~~

1 ~~when reviewing a petition and its attendant documents and~~  
2 ~~comments.~~

3 ~~(b) This section shall become operative on January 1, 2017.~~

4 SEC. 7. Section 2075.5 of the Fish and Game Code, as amended  
5 by Section 9 of Chapter 387 of the Statutes of 2013, is amended  
6 to read:

7 2075.5. (a) At the meeting scheduled pursuant to Section 2075,  
8 the commission shall hold a public hearing on the petition and  
9 shall receive information, written or otherwise, and oral testimony.  
10 After the conclusion of oral testimony from department staff, the  
11 petitioner, or any other persons, the commission may close the  
12 public hearing and the administrative record for the department's  
13 decision pursuant to this section.

14 (b) After the commission closes the public hearing the  
15 administrative record for the commission's decision is closed and  
16 it shall not be reopened except as provided in subdivision (c). Once  
17 the public hearing is closed a person shall not submit further  
18 information to the department for consideration on that petition  
19 and the commission shall not accept any further information for  
20 consideration on that petition except as provided in subdivision  
21 (c).

22 (c) The administrative record for the commission's decision  
23 pursuant to this section shall not be reopened once the department  
24 closes the public hearing unless one of the following occurs prior  
25 to the commission's decision:

26 (1) There is a change in state or federal law or regulation that  
27 has a direct and significant impact on the commission's  
28 determination as to whether the petitioned action is warranted.

29 (2) The commission determines that it requires further  
30 information to evaluate whether the petitioned action is warranted.  
31 If the commission makes that determination during its deliberation,  
32 the commission may request, on the record at the scheduled  
33 meeting or at a continued meeting, further information on any  
34 issue relevant to making its determination as to whether the  
35 petitioned action is warranted. Any request by the commission  
36 pursuant to this paragraph shall specify a date by which the  
37 information must be submitted to the commission and shall serve  
38 to reopen the administrative record for the limited purpose of  
39 receiving further information relating to the issues specified by  
40 the commission in the request. Commission and department staff,

1 the petitioner, or any other person may submit information in  
2 response to a request pursuant to this paragraph.

3 (d) The commission, in its discretion, may either close the public  
4 hearing and continue the meeting on the petition for the purpose  
5 of deliberation or continue both the public hearing and the meeting  
6 on the petition to a subsequent date which is no later than 90 days  
7 after the meeting scheduled pursuant to Section 2075, and subject  
8 to applicable notice and agenda requirements. If the commission  
9 closes the public hearing but continues the meeting for the purpose  
10 of deliberation, a person shall not submit, and the commission  
11 shall not receive, further information relating to the petition except  
12 as provided in subdivision (c).

13 (e) At the meeting scheduled pursuant to Section 2075, or at a  
14 continued meeting scheduled pursuant to subdivision (d), the  
15 commission shall make one of the following findings:

16 (1) The petitioned action is not warranted, in which case the  
17 finding shall be entered in the public records of the commission  
18 and the petitioned species shall be removed from the list of  
19 candidate species maintained pursuant to Section 2074.2.

20 (2) The petitioned action is warranted, in which case the  
21 commission shall publish a notice of that finding and a notice of  
22 proposed rulemaking pursuant to Section 11346.4 of the  
23 Government Code, to add the species to, or remove the species  
24 from, the list of endangered species or the list of threatened species.  
25 Further proceedings of the commission on the petitioned action  
26 shall be made in accordance with Chapter 3.5 (commencing with  
27 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
28 Code.

29 ~~(f) This section shall remain in effect only until January 1, 2017,~~  
30 ~~and as of that date is repealed, unless a later enacted statute, that~~  
31 ~~is enacted before January 1, 2017, deletes or extends that date.~~

32 SEC. 8. Section 2075.5 of the Fish and Game Code, as added  
33 by Section 10 of Chapter 387 of the Statutes of 2013, is repealed.

34 ~~2075.5. (a) At the meeting scheduled pursuant to Section 2075,~~  
35 ~~the commission shall make one of the following findings:~~

36 ~~(1) The petitioned action is not warranted, in which case the~~  
37 ~~finding shall be entered in the public records of the commission~~  
38 ~~and the petitioned species shall be removed from the list of~~  
39 ~~candidate species maintained pursuant to Section 2074.2.~~



~~(2) The petitioned action is warranted, in which case the commission shall publish a notice of that finding and a notice of proposed rulemaking pursuant to Section 11346.4 of the Government Code to add the species to, or remove the species from, the list of endangered species or the list of threatened species. Further proceedings of the commission on the petitioned action shall be made in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(b) This section shall become operative on January 1, 2017.~~

SEC. 9. Section 2115.5 of the Fish and Game Code is amended to read:

2115.5. This article shall remain in effect only until January 1, ~~2017~~, 2020, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, ~~2017~~, 2020, deletes or extends that date. However, this section does not apply to a recovery strategy that is approved or implemented pursuant to this article on or before January 1, ~~2017~~, 2020, and those recovery strategies, and any permits or memoranda of understanding relating thereto, shall remain effective as if this article had not been repealed.

SEC. 10. Section 2301 of the Fish and Game Code is amended to read:

2301. (a) (1) Except as authorized by the department, a person shall not possess, import, ship, or transport in the state, or place, plant, or cause to be placed or planted in any water within the state, dreissenid mussels.

(2) The director or his or her designee may do all of the following:

(A) Conduct inspections of conveyances, which include vehicles, boats and other watercraft, containers, and trailers, that may carry or contain adult or larval dreissenid mussels. Included as part of this authority to conduct inspections is the authority to temporarily stop conveyances that may carry or contain adult or larval dreissenid mussels on any roadway or waterway in order to conduct inspections.

(B) Order that areas in a conveyance that contain water be drained, dried, or decontaminated pursuant to procedures approved by the department.

1 (C) Impound or quarantine conveyances in locations designated  
2 by the department for up to five days or the period of time  
3 necessary to ensure that dreissenid mussels can no longer live on  
4 or in the conveyance.

5 (D) (i) Conduct inspections of waters of the state and facilities  
6 located within waters of the state that may contain dreissenid  
7 mussels. If dreissenid mussels are detected or may be present, the  
8 director or his or her designee may order the affected waters or  
9 facilities closed to conveyances or otherwise restrict access to the  
10 affected waters or facilities, and shall order that conveyances  
11 removed from, or introduced to, the affected waters or facilities  
12 be inspected, quarantined, or disinfected in a manner and for a  
13 duration necessary to detect and prevent the spread of dreissenid  
14 mussels within the state.

15 (ii) For the purpose of implementing clause (i), the director or  
16 his or her designee shall order the closure or quarantine of, or  
17 restrict access to, these waters, areas, or facilities in a manner and  
18 duration necessary to detect and prevent the spread of dreissenid  
19 mussels within the state. No closure, quarantine, or restriction shall  
20 be authorized by the director or his or her designee without the  
21 concurrence of the Secretary of the Natural Resources Agency. If  
22 a closure lasts longer than seven days, the department shall update  
23 the operator of the affected facility every 10 days on efforts to  
24 address the dreissenid infestation. The department shall provide  
25 these updates in writing and also post these updates on the  
26 department's Internet Web site in an easily accessible manner.

27 (iii) The department shall develop procedures to ensure proper  
28 notification of affected local and federal agencies, and, as  
29 appropriate, the Department of Water Resources, the Department  
30 of Parks and Recreation, and the State Lands Commission in the  
31 event of a decision to close, quarantine, or restrict a facility  
32 pursuant to this paragraph. These procedures shall include the  
33 reasons for the closure, quarantine, or restriction, and methods for  
34 providing updated information to those affected. These procedures  
35 shall also include protocols for the posting of the notifications on  
36 the department's Internet Web site required by clause (ii).

37 (iv) When deciding the scope, duration, level, and type of  
38 restrictions, and specific location of a closure or quarantine, the  
39 director shall consult with the agency, entity, owner, or operator  
40 with jurisdiction, control, or management responsibility over the

1 marina, boat launch facility, or other facility, in order to focus the  
2 closure or quarantine to specific areas and facilities so as to avoid  
3 or minimize disruption of economic or recreational activity in the  
4 vicinity.

5 (b) (1) Upon a determination by the director that it would further  
6 the purposes of this section, other state agencies, including, but  
7 not limited to, the Department of Parks and Recreation, the  
8 Department of Water Resources, the Department of Food and  
9 Agriculture, and the State Lands Commission, may exercise the  
10 authority granted to the department in subdivision (a).

11 (2) A determination made pursuant to paragraph (1) shall be in  
12 writing and shall remain in effect until withdrawn, in writing, by  
13 the director.

14 (c) (1) Except as provided in paragraph (2), Division 13  
15 (commencing with Section 21000) of the Public Resources Code  
16 does not apply to the implementation of this section.

17 (2) An action undertaken pursuant to subparagraph (B) of  
18 paragraph (2) of subdivision (a) involving the use of chemicals  
19 other than salt or hot water to decontaminate a conveyance or a  
20 facility is subject to Division 13 (commencing with Section 21000)  
21 of the Public Resources Code.

22 (d) (1) A public or private agency that operates a water supply  
23 system shall cooperate with the department to implement measures  
24 to avoid infestation by dreissenid mussels and to control or  
25 eradicate any infestation that may occur in a water supply system.  
26 If dreissenid mussels are detected, the operator of the water supply  
27 system, in cooperation with the department, shall prepare and  
28 implement a plan to control or eradicate dreissenid mussels within  
29 the system. The approved plan shall contain the following  
30 minimum elements:

31 (A) Methods for delineation of infestation, including both adult  
32 mussels and veligers.

33 (B) Methods for control or eradication of adult mussels and  
34 decontamination of water containing larval mussels.

35 (C) A systematic monitoring program to determine any changes  
36 in conditions.

37 (D) The requirement that the operator of the water supply system  
38 permit inspections by the department as well as cooperate with the  
39 department to update or revise control or eradication measures in

1 the approved plan to address scientific advances in the methods  
2 of controlling or eradicating mussels and veligers.

3 (2) If the operator of water delivery and storage facilities for  
4 public water supply purposes has prepared, initiated, and is in  
5 compliance with all the elements of an approved plan to control  
6 or eradicate dreissenid mussels in accordance with paragraph (1),  
7 the requirements of subdivision (a) do not apply to the operation  
8 of those water delivery and storage facilities, and the operator is  
9 not subject to any civil or criminal liability for the introduction of  
10 dreissenid mussel species as a result of those operations. The  
11 department may require the operator of a facility to update its plan,  
12 and if the plan is not updated or revised as described in  
13 subparagraph (D) of paragraph (1), subdivision (a) shall apply to  
14 the operation of the water delivery and storage facilities covered  
15 by the plan until the operator updates or revises the plan and  
16 initiates and complies with all of the elements of the updated or  
17 revised plan.

18 (e) Any entity that discovers dreissenid mussels within this state  
19 shall immediately report the discovery to the department.

20 (f) (1) In addition to any other penalty provided by law, any  
21 person who violates this section, violates any verbal or written  
22 order or regulation adopted pursuant to this section, or who resists,  
23 delays, obstructs, or interferes with the implementation of this  
24 section, is subject to a penalty, in an amount not to exceed one  
25 thousand dollars (\$1,000), that is imposed administratively by the  
26 department.

27 (2) A penalty shall not be imposed pursuant to paragraph (1)  
28 unless the department has adopted regulations specifying the  
29 amount of the penalty and the procedure for imposing and  
30 appealing the penalty.

31 (g) The department may adopt regulations to carry out this  
32 section.

33 (h) Pursuant to Section 818.4 of the Government Code, the  
34 department and any other state agency exercising authority under  
35 this section shall not be liable with regard to any determination or  
36 authorization made pursuant to this section.

37 (i) This section shall remain in effect only until January 1, ~~2017~~,  
38 2020, and as of that date is repealed, unless a later enacted statute,  
39 that is enacted before January 1, ~~2017~~, 2020, deletes or extends  
40 that date.

1     SEC. 11. No reimbursement is required by this act pursuant to  
2     Section 6 of Article XIII B of the California Constitution because  
3     the only costs that may be incurred by a local agency or school  
4     district will be incurred because this act creates a new crime or  
5     infraction, eliminates a crime or infraction, or changes the penalty  
6     for a crime or infraction, within the meaning of Section 17556 of  
7     the Government Code, or changes the definition of a crime within  
8     the meaning of Section 6 of Article XIII B of the California  
9     Constitution.

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